IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

AR.No. 16 of 2007()

APPLICANT

SPL INFRASTRUCTURE PVT.LTD.,
ENGINEERING CONTRACTORS, R.O.NO.24, 1ST FLOOR,
CRESCENT PARK STREET, T.NAGAR, CHENNAI- 600 017,
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.RAJIV ABRAHAM GEORGE
SRI.EAPEN ABRAHAM GEORGE

OPPOSITE PARTY

ROADS AND BRIDGES DEVELOPMENT
CORPORATION OF KERALA LTD., 2ND FLOOR,
PREETHI BUILDINGS, M.V.ROAD, PALARIVATTOM,
COCHI-682 025 REPRESENTED BY ITS
MANAGING DIRECTOR.

BY ADV. SRI.M.VIJAYA KUMAR, SC, RBDCK

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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A.R.No.16 of 2007

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Dated: 19th July, 2007

ORDER

The Applicant-company are civil engineering contractors to various departments of Central and State Governments and the opposite party is the Roads and Bridges Development Corporation of Kerala Ltd. The applicant-company were contractors to the Opposite Party-Corporation for the work of design and construction of road over bridges at Palakkad town - Sulthanpet at km 53/10 - 11 in lieu of L C No.49, Palakkad Town - Victoria College at km 54/ 12 - 13 in lieu of L C No.50 & Kadukkamkunnu at km 531/8 - 10 in lieu of L C No.159. Annexure I is copy of the contract agreement. The applicant alleges that due to dereliction on the part of the opposite party-Corporation in discharging their obligations under Annexure I, including delay in payment of running account bills, heavy losses were occasioned to the applicant and the applicant accordingly sent Annexure 2 letter to the opposite party to convene a meeting for discussing the continuation and completion of the road over bridge at Sulthanpet with price variation benefits or to foreclose or suspend the work since the opposite party was unable to provide work fronts or make payments and to compensate the applicant for the various

instances of breach of contract. Annexure 3 is copy of the reply which was sent by the opposite party to Annexure 2. Annexure 4 is copy of another letter which the applicant issued to the opposite party wherein it was reiterated that the applicant was ready to complete the entire work on condition that the works executed and to be executed after the original period would have to be paid for at higher rates and that if the opposite party was not agreeable to the same, the applicant is permitted to withdraw from the work without affecting its rights to claim such amounts as may be due for the work done as well as compensation and damages for the losses caused on account of delays, defaults and breach of contract attributable to the opposite party. Annexure 5 is copy of the minutes of meeting held on 18.2.2005 between the representatives of the applicant and the opposite party and it is claimed that it was agreed in the said meeting that closure agreement would be drawn up and executed for the road over bridges at Victoria College and Kadukkamkunnu and that joint measurements will be taken up along with the consultants immediately and payments made for completed works according to standard practices adopted for lumpsum contracts. It is submitted that pursuant to Annexure 5 the contract was foreclosed and joint

measurements of works done were taken and Annexure 6 copy of letter dated 8.4.2005 is relied on in this context. The grievance voiced by the applicant is that even after Annexures 5 and 6 the opposite party was delaying the process of formal acceptance of the final measurements resulting in IX running account bill not being processed, finalised or paid. Under such circumstances, Annexure 7 claim notice invoking clause 67.1 of the G.C.C. was sent to the applicant which was followed by Annexure 8 request seeking constitution of an arbitral tribunal in terms of clause 67.3 of the G.C.C. In reply to Annexure 8 the opposite party sent Annexure 9 letter dated 22.1.2007 intimating that for constitution of the Steering Committee as requested by the applicant, the matter will have to be placed before the Board of Directors and hence requested the applicant to wait till April 2007. The applicant complains that in spite of elapse of more than four months after Annexure 9 nothing has been done by the opposite party in the matter, and that the opposite party has failed to constitute an arbitral tribunal in terms of condition 67.3 of the G.C.C. Annexure 10 produced along with the A.R. is true copy of the arbitration clause. It is on the above facts that the A.R. has been filed invoking Section 11(6) and (8) of the Arbitration and

Conciliation Act, 1996 seeking appointment of an independent and impartial Arbitrator.

2. The opposite party has been served with notice. No counter affidavit or statement of objections is filed by the opposite party.

3. The averments in the Arbitration Request and the various annexures produced along with the same will show that the applicant was justified in invoking the jurisdiction of the Chief Justice of this court under Section 11(6) and (8) of the Arbitration and Conciliation Act, 1996. The Arbitration Request accordingly will stand allowed. Mr.Justice J.M.James, a retired Judge of this court known for his impartiality, integrity and efficiency is appointed as Arbitrator to settle the disputes between the parties over and in respect of Annexure 1 contract including the claims raised by the applicant through Annexure 7. The Arbitrator will enter on reference at his earliest and pass award in accordance with law.

srd **PIUS C.KURIAKOSE, JUDGE**